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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DANIELLA A. et al., Persons
Coming Under the Juvenile Court Law.

B218636
(Los Angeles County
Super. Ct. No. CK64429)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jan Levine,
Judge. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Denise Hippach, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

J.V., mother of 12-year-old Daniella A. and 3-year-old Amanda V., appeals from the order of the juvenile court denying her petition for modification (Welf. & Inst. Code, § 388).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The dependency*

We take judicial notice of our opinion filed on October 2, 2008 in an earlier appeal in this dependency (B205467): The juvenile court declared half-siblings Amanda, Daniella and M.G.,² dependents of the court because of M.G.'s father's past sexual abuse of Daniella, mother's history of amphetamine and methamphetamine abuse, and Amanda's positive toxicology screen for amphetamines at birth. (§ 300, subd. (b).) At the time the children were detained, mother was married to M.G.'s father, but they have been separated for years. The Department of Children and Family Services (the Department) removed the children from mother's care and placed Amanda and Daniella with their maternal great aunt Maria G.

Mother told the Department that her husband beat her frequently. She used crystal methamphetamine starting when she was 18 years old and used during her pregnancy with Amanda. She had never completed a rehabilitation program. Also, mother suffers from bipolar disorder and schizophrenia. She was hospitalized in October 2004 and had not taken her prescribed medication in the year before the children's detention. She was unemployed and periodically homeless. She also tested positive for the Human Immunodeficiency Virus (HIV).

2. *Mother's conduct during and after the 18 months of reunification*

As reunification services, mother was ordered to participate in a drug rehabilitation program with random drug testing, a parenting course, conjoint counseling

¹ All further statutory references are to the Welfare and Institutions Code.

² The children each of a different father. Neither the fathers nor M.G., who has been returned to the custody of his father, is a party to this appeal.

with Daniella when appropriate, and individual counseling to address drug use, domestic violence, and other case issues.

Mother received 18 months of reunification services but did not complete her program. She was discharged from her rehabilitation program after five months for violating program rules. Although she enrolled in a second program in the fall of 2007, “[h]er sobriety was a continuing concern because she provided three diluted tests that autumn.” Despite repeated requests for it, the Department was unable to obtain confirmation that mother was participating in individual therapy, or receiving treatment for her mental health issues, including the voices that she heard. Mother did not provide correspondence from her therapist confirming the dates she had received a diagnosis or treatment. The juvenile court terminated reunification services in March 2008, upon a finding that mother was only in partial compliance with the case plan.

Many problems plagued mother throughout this dependency. Employment was one such difficulty. Mother ceased working in October 2007 because of an automobile accident and the Department was unable to verify mother’s employment status thereafter. Although mother provided the social worker with a letter from a Ms. Kelly indicating she had employed mother, it never received a pay stub from mother or the employer. In September 2008, the Department related that an anonymous family member reported to the social worker that mother was not employed, and Ms. Kelly was mother’s friend and not her employer.

Domestic violence is also a recurring problem in mother’s life. After M.G.’s father, mother had ongoing fights and arguments in her relationship with Amanda’s father. During one argument, Amanda’s father threw her out of the house and hosed her down with water. He also tormented her by imitating the sounds of the voices she heard in her head. While mother claimed to have ended another relationship the following year, in 2008, the maternal grandmother reported in early 2008 that mother was still involved with that man.

Mother’s problems affected Daniella. Maria G. took Daniella for a therapeutic evaluation where the child was diagnosed with adjustment, generalized anxiety, and

depressive disorders. Her symptoms included sadness, nightmares, fear of sleeping or being alone, and she worried excessively about and missed mother. Her therapist was working with Daniella to “cop[e] through her family issues.” Daniella stated both that she wanted to return to mother’s care and that she remembered the domestic violence when she lived with mother, which scared her and caused her to worry about mother’s safety. She also stated that in Maria G.’s home, she feels fine, comfortable, and safe. Daniella’s therapist observed the “nurturing support” and “affection shared” by Daniella and Maria G. Amanda has been with Maria G. since birth and calls her “mom.”

Unmonitored visits between mother and the children began in the fall of 2007. There were numerous complaints about inappropriate conduct. In the fall of 2008 after services were terminated, the Department raised concerns about mother’s “lack of judgment when the girls are in her care.” Mother would engage in heated altercations and use profanity in front of the children, upsetting them. Mother left the children alone with people they did not know or with one father who was only allowed supervised contact with the children. The children frequently would return to Maria G. unbathed, in the clothing they wore the previous day, and complaining about hunger because mother fed them once a day. Daniella’s anxiety increased; she had stomach aches, and wet her bed after mother told the child she had gotten into trouble because of what Daniella shared with the social worker. Daniella’s feelings for her mother conflicted with the affection, nurturing, safety and security she feels with Maria G. Daniella did not trust that mother could provide the same safety that the maternal aunt does.

3. Mother’s additional six months of reunification

A month before the scheduled section 366.26 hearing, mother filed a section 388 petition asking for return of the children to her custody or reinstatement of services for an additional six months. In October 2008, the juvenile court granted mother’s petition and gave mother an additional six months of services.

During the additional period of reunification, mother’s sobriety remained a concern. She tested positive for Vicodin in December 2008, and failed to produce verification that the Vicodin was prescribed. Her doctor denied prescribing such

medication for her. Also, mother inconsistently attended Alcoholics and Narcotics Anonymous (AA and NA) meetings. The social worker suspected mother had forged some of her attendance cards. In March 2009, the juvenile court ordered that mother would have no further overnight visits with the children, noting that mother's AA and NA attendance was irregular.

Problems with domestic violence persisted. Mother was repeatedly involved in verbal altercations with her friend Ms. Kelly. One altercation became physical. Although mother minimized these fights, the police were called in March 2009. The maternal grandmother filed a restraining order against mother and evicted mother from the grandmother's house because mother verbally abused and threatened to harm the grandmother. After being evicted, mother had neither steady employment nor a permanent residence. She moved in with Ms. Kelly, who covered all of mother's expenses.

The juvenile court terminated reunification services at the close of the additional six-month period. The court commended mother on her progress, but found that domestic violence was a "persistent thread in the case." The court also found mother's housing to be unstable and mother had failed to demonstrate she could support the children. The court invited mother, if she could provide more definitive resolution of the enumerated concerns, to file a section 388 petition.

4. Post-reunification

In June 2009, mother moved in with a new boyfriend. She found work cleaning a house once a month and working at the farmer's market twice a week. Her income was small and so the new boyfriend covered most of mother's living expenses. Daniella explained that during visits with mother, she cared for her siblings because mother spent most of her time with the boyfriend. Daniella did not feel comfortable around the boyfriend and reported mother drinks beer. When mother left the children alone for several hours with the boyfriend, the child locked herself and her siblings in the bedroom until mother returned. Daniella continued to be torn between mother, who she loves but

who is unstable and lets her partners take priority over the children, on the one hand, and Maria G., with whom Daniella feels safe and secure, on the other hand.

Mother filed the instant section 388 petition in July 2009, seeking return of the children to her care or an additional reunification period, or resumption of weekend and overnight visits with the children. Mother explained that the change would be in the children's best interest because the bond between her and the children was loving and "future estrangement" would not be in their best interest. As changed circumstances, mother said she had appropriate housing and a job. The court granted a hearing on the section 388 petition.

At the hearing on the section 388 petition at issue here, Daniella testified that she wanted to live with mother, but by the end of her testimony, she declared she preferred to remain with Maria G. and continue visits with mother.

The juvenile court denied the petition. Although mother had made progress, the court found that the progress did not outweigh the security and safety the children felt for the last three years with Maria G. The court doubted mother's credibility, was unsure about mother's housing stability -- noting she had just begun a new relationship -- and found mother was not stable. The court found that mother had not carried her burden to show that it was in the children's best interest to grant the petition. After the court denied the petition, mother filed her appeal.

CONTENTION

Mother contends that the juvenile court abused its discretion in denying her section 388 petition.

DISCUSSION

Section 388 allows a parent to petition the court for a hearing to modify or set aside any previous order on the grounds of change of circumstance or new evidence, such that the proposed change would be in the child's best interest.³

³ Section 388 states, "(a) Any parent . . . having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or

In ruling on a section 388 petition, the juvenile court’s task is to determine whether the petitioner, mother here, demonstrated by a preponderance of the evidence “that [(1)] there is a change of circumstances or new evidence, *and* [(2)] the proposed modification is in the minor’s best interests. [Citations.]” (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119, italics added; citing *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) A petition under section 388 is addressed to the juvenile court’s sound discretion and on appeal, we will disturb the decision only by a *clear abuse of that discretion.* (*In re Jasmon O., supra*, at p. 415.) “ ‘ ‘ [‘]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” [Citation.]’ [Citations.]” (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095-1096.)

With respect to the first prong of the test, the juvenile court did acknowledge that some change in circumstances had occurred. It stated to mother “you have really pulled your life together amazingly since the case came into court three years ago” and that it had no doubt the children would be safe with her. However, the court correctly found mother did not carry her burden to demonstrate the second prong, namely, that the proposed modification to return the children to mother’s care or grant additional services would be in the girls’ best interests.

The factors juvenile courts consider in determining whether a proposed change of order is in the child’s best interests are, among others: “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed

new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . . [¶] . . . [¶] (d) If it appears that the best interests of the child may be promoted by the proposed change of order . . . the court shall order that a hearing be held”

or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

Reviewing each factor here demonstrates that returning the children to mother’s custody or granting additional overnight visits would not be in the children’s best interests. First, the issues that led to this dependency are extremely serious. The children were removed from mother’s custody because of her substance abuse, domestic violence, and sexual abuse of Daniella. Mother’s conduct has caused upheaval and insecurity for the girls. Daniella continues to feel unsafe around mother’s partners, still worries about mother’s safety, and as recently as the hearing on this section 388 petition, expressed a preference to live in a safe and secure home with Maria G. Indeed, the juvenile court had only recently terminated overnight visits with the children because of mother’s unreliable behavior.

Referring to the third factor, these problems cannot be easily removed or ameliorated. (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.) Indeed, many have not been resolved after *three years* of dependency. Drug addiction is not a problem that is easily ameliorated. (Cf. *id.* at p. 531, fn. 9.) And, Daniella reported as recently as August 2009 that mother drinks beer in the child’s presence. The record indicates that domestic violence continues to plague mother’s life. She is serially involved in abusive relationships and even her own mother kicked her out of the house and sought a restraining order against mother. Mother claims to have settled down with this new boyfriend. But, that has only occurred recently, and so there is no track record by which the court could assess whether mother is really stable even now.

Turning to the second *Kimberly F.* factor, it requires the court to assess the “relative” bonds between the dependent children to *both* parent and caretakers (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532) and so mother’s contention that the juvenile court improperly “compare[ed] the households” is specious. More important, the comparison does not work in mother’s favor. Mother had some unmonitored and some overnight visits with the children, but they were terminated because of mother’s conduct. Daniella has repeatedly stated she does not feel safe with mother and does not

trust that mother can provide her a safe environment. Daniella is often her sister's caretaker during visits with mother who leaves the children unsupervised or with adults they do not know. By contrast, Maria G. has made sure that Daniella attends her therapy sessions and meets the children's needs. In Maria G.'s care, the children feel loved, safe, and secure. Indeed, Maria G. is the only home Amanda has ever known. Daniella clearly loves and is bonded with mother, which is why she struggles with enjoying time with mother, as her feelings for mother conflict with the feelings of affection, nurturing, security, and stability that she receives from Maria G. The children refer to Maria G. as "mom." Where none of the factors indicate that returning the children to mother's care would be in their best interests, the juvenile court did not abuse its discretion in ruling that it would not be in the girls' best interest to return them to mother's care or resume weekend and overnight visits.

Mother contends that the court erred as a matter of law by focusing on the children's need for stability and permanency. Actually, our Supreme Court has explained "[a]fter the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point '*the focus shifts to the needs of the child for permanency and stability*' (*In re Marilyn H.* [(1993)] 5 Cal.4th 295, 309), and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. (*Id.*, at p. 302.) A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317, italics added.) Therefore, "when a child has been placed in foster care because of parental neglect or incapacity, after an extended period of foster care, *it is within the court's discretion to decide that a child's interest in stability has come to outweigh the natural parent's interest in the care, custody and companionship of the child.* [Citation.]" (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 419, italics added.) Consequently, the juvenile court followed the law and clearly did not abuse its discretion by premising its best-interest finding on the stability and security these children feel in the custody of Maria G.

Nor did mother rebut the presumption that it is in the girls' best interest to continue in foster care. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Mother's section 388 petition stated only that returning the children to her would be in their best interest because she had a loving bond with them and "future estrangement" would not be in their best interest.

Mother's section 388 petition also requested an additional reunification period. She contends on appeal that the juvenile court erred in denying her petition based on "the children's length of time in the placement" and "the passage of time." Mother is wrong. Given the age of the children at the time of the disposition hearing, mother was entitled to 12 months of services for Daniella and 6 months for Amanda. (§ 361.5, subd. (a)(1)(A) & (B).) But, mother had 19 months of reunification services initially. The Legislature has established that reunification services may be extended, but not to "exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian" (§ 361.5, subd. (a)(4).) Mother was given an additional seven months the second time, with the result she had 26 months of services, two more than the Legislature allows. Furthermore, mother's reunification services were terminated 34 months, or just short of *three years*, after the date the children were removed from mother's custody. Therefore, mother has already had far more reunification services than the Legislature has allowed and so the juvenile court simply had no authority to grant mother's request for more services.

Mother argues at a minimum she demonstrated that the court should have granted additional reunification to cure any remaining problems. But, our Supreme Court has explained "in order to prevent children from spending their lives in the uncertainty of foster care, *there must be a limitation on the length of time a child has to wait for a parent to become adequate.* [Citations.] To avoid unnecessary delays in the process the Legislature has directed the juvenile court to 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' [Citation.]" (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 308, italics added.) "Childhood

does not wait for the parent to become adequate.” (*Id.* at p. 310.) After more than two years of reunification and nearly three years of dependency, these children should not be made to wait for mother to become adequate. The juvenile court did not abuse its discretion in denying mother’s section 388 petition.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.